

AUG 21 1986

MEMORANDUM FOR: Deputy Director for Legislation
Office of Congressional Affairs

FROM: Robert W. Magee
Director of Personnel

SUBJECT: Second Draft of Intelligence Community Legislative
Program for First Session of the 100th Congress

REFERENCE: Your memorandum for multiple addresses, same subject,
OCA 86-2647, dated 8 August 1986

1. We have reviewed the subject document and have the following comments:

2. We would ask that you clarify with NSA the particular reasons why it believes it needs Item 100/1-26, NSA Special Expenditure Authority. If those specific needs adequately can be addressed by new authorities which are narrower than a Section 8 for NSA, we believe the more tailored approach would be preferable.

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Robert W. Magee

OCA 86-2647
8 August 1986

MEMORANDUM FOR: (See internal distribution)

FROM:

Deputy Director for Legislation
Office of Congressional Affairs

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SUBJECT: Request for Comments: Second Draft of Intelligence
Community Legislative Program for First Session of
the 100th Congress

1. Attached for your review and comment please find copies of the second and final draft of the Intelligence Community Legislative Program for the First Session of the 100th Congress. This draft reflects comments from the Community and the Agency received after circulation of the first draft (dated June 30, 1986).

2. We ask for your comments on this second draft by August 15, 1986. This will enable the Program to be sent forward to the Director of Central Intelligence (DCI) for his approval and then, in turn, forwarded to the Office of Management and Budget (OMB) by the Gramm-Rudman-imposed deadline of September 1, 1986. Your attention is directed to the following items.

3. Access to Agency Employee Financial Information To Assess Vulnerability to Counterintelligence Threat. In their comments on Item #100/1 - 3 (Right to Financial Privacy Act Amendment), several components recommended that Agency access to an employee's financial institution record information be made contingent upon a threshold determination that the employee is vulnerable to a counterintelligence threat. In response, the language of item #100/1 - 3 itself was modified to reflect such a threshold.

4. We understand that the Office of General Counsel and the Deputy Directorate for Administration are currently reviewing the entire area of employee financial vulnerability to the counterintelligence threat. Inclusion of Item #100/1 - 3 in the program preserves the option of going forward with legislation in this area should that be determined to be necessary.

5. Continuity of DCI Function. Item #100/1 - 30 reflects a proposal from the Executive Secretary that a legislative solution be sought to the problem of how the DCI's statutory functions can be performed in those instances when both the DCI and the Deputy Director for Central Intelligence are unavailable.

6. Congressional Security Survey. As part of this Office's ongoing efforts to increase the security with which Agency information is handled by the Congress, we have included in the Program a proposal to authorize the Executive Branch to assist the Congress in conducting a survey of its security needs, Item #100/1 - 22. This item signals an intention to propose or support legislation if, after a review of our efforts, it is determined to be necessary.

7. Repeal of Programmatic Restrictions and Reporting Requirements.

Recent discussions with the intelligence oversight committees have indicated agreement that some reporting requirements and programmatic restrictions in law and in previous budgets may be outdated, unnecessary or unduly burdensome. We are in the process of identifying these for possible repeal/recision in connection with the Fiscal Year 1988 Intelligence Authorization Act budgetary process. Item #100/1 - 25 is included in the Program to signal an intention that legislation may be considered if the results of the review indicate it is required.

8. "Former Spouses" Items. The one "former spouses" proposal of the first draft was divided into two proposals for clarity's sake: #100/1 - 6A (Survivor and Health Benefits for Certain Former Spouses of CIA Employees) and #100/1 - 6B (Conformance of Certain Provisions of CIARDS with P.L. 98-615).

9. Item 100/1 - 6A reflects a provision, already contained in both the House and Senate version of this year's intelligence authorization bill, to extend to pre-1982 Agency "former spouses" the benefits of the CIA Spouse Equity Act of 1982. It is included in the Program merely to show continued support for that provision in the event the Intelligence Authorization bill does not pass in its current form and the item must be considered anew next year.

10. Item 100/1 - 6B represents an effort to extend to all Agency "former spouses" the benefits of the Civil Service Spouse Equity Act of 1984. The underlying legislation was considered for inclusion in last year's draft intelligence authorization bill as sent to the Congress, but had to be dropped due to the press of time.

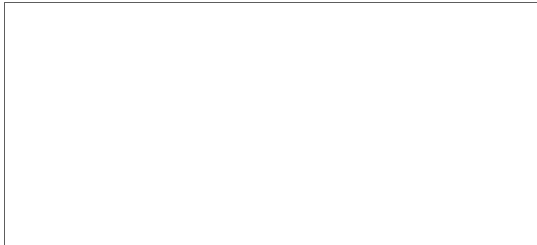
11. Interlocutory Appeal and Drug & Alcohol Abuse Authorities. At the request of the Office of General Counsel (OGC), two items from previous years were included: interlocutory appeal authority (Item #100/1 - 31) and clarification of CIA/NSA/DIA drug and alcohol abuse authorities (Item #100/1 - 21). In view of the unfavorable reception which the Congress previously gave to these items in the past, OGC is currently reviewing them with a view towards improving their reception and answering some of the Congressional objections should the proposals ultimately be sent forward.

12. NSA Proposals. The National Security Agency (NSA) proposes for inclusion in the program four items. Three have been previously reviewed in one form or another: #100/1 - 27 (Foreign Cryptography Controls), #100/1 - 28 (Tax-Exempt Payments for Certain NSA Employees) and #100/1 - 29 (Squillacote Payments to NSA Employees). The fourth, NSA Special Expenditure of Funds Authority, #100/1 - 26, is new. The authority sought here would be similar in nature to that already possessed by the Agency under Section 8 of the Central Intelligence Agency Act of 1949.

13. Foreign Agent Registration. A proposal has been added to amend the Foreign Agents Training Act. That Act requires an individual who has received training in espionage to register with the government. Failure to register is punishable by imprisonment for up to five years. The FBI has attempted to use the Act against "support agents" who are not directly involved with passage of classified information to a foreign power, but who help others engaged in espionage by renting a safe house or performing other acts that further an espionage operation. The Act, which was passed in 1956, has not proved useful because the government has interpreted the Act to allow an individual to cure a failure to register by registration after they have been apprehended for violation of the Act. The proposed amendment would make clear that registration after a certain date following training in espionage would not cure the previous violation.

14. Please feel free to contact this office should you have any questions on this matter.

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**SUBJECT: Request for Comments: Second Draft of Intelligence
Community Legislative Program for First Session of
the 100th Congress**

OCA/LEG/ (8 Aug 1986)

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CENTRAL INTELLIGENCE AGENCY
AND
INTELLIGENCE COMMUNITY
PROPOSED LEGISLATIVE PROGRAM
FOR THE FIRST SESSION
OF THE 100th CONGRESS

(Asterik indicates those items currently included in either H.R. 4759 or S. 2477, the House and Senate versions, respectively, of the intelligence authorization bill)

LEGISLATIVE PROPOSALS

100/1 - 1:

Fiscal Year 1988 Intelligence
Authorization Act

The Director of Central Intelligence will submit to the Office of Management and Budget for clearance a proposed Fiscal Year 1988 Intelligence Authorization Act for transmittal to the Congress.

100/1 - 2:

Protection of Intelligence
Information

The Director of Central Intelligence may propose legislation to provide criminal penalties for willful unauthorized disclosures of classified information by federal employees and others having authorized access to classified information and may support this proposal as contained in other legislation.

100/1 - 3:

Right To Financial Privacy Act
Amendment

The Director of Central Intelligence (DCI) may propose legislation to clarify the Agency's authority to examine the financial records of employees where grounds exist to believe they may be vulnerable to a

counterintelligence threat. The DCI may also support extensions of any such authority to other agencies in the Intelligence Community as appropriate.

100/1 - 4:

Department of Defense
Proprieties

At the request of the Department of Defense, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act legislation which would grant the Department of Defense authority to establish and operate corporations or other business entities in support of authorized and appropriately coordinated intelligence activities and may support this proposal as contained in other legislation.

*100/1 - 5:

Exemption from Requirement to
Publish Record
Disposal Requests

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act legislation to amend the U.S. Code to exempt the Central Intelligence Agency and the National Security Agency from the requirement that the Archivist publish in the Federal Register the records disposal requests for the purpose of soliciting public comment.

*100/1 - 6/A

Survivor and Health Benefits for
Certain Former Spouses of CIA
Employees

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence may include in the Fiscal Year 1988 Intelligence Authorization Bill an amendment to the law governing the Central Intelligence Agency Retirement and Disability System (CIARDS) so as to provide survivor benefits for certain former spouses divorced prior to the effective date of the CIA Spouse Equity Act of 1982 (15 November 1982) and health benefits for certain former spouses divorced prior to the effective date of the Civil Service Spouse Equity Act (7 May 1985).

100/1 6/B

Conformance of Certain Provisions
of CIARDS with P.L. 96-615

The Director of Central Intelligence may propose legislation to amend the law governing the Central Intelligence Agency Retirement and Disability System (CIARDS) so as to incorporate certain former spouse entitlements which were made available to former spouses or participants in the Civil Service Retirement System by passage of the Civil Service Spouse Equity Act of 1984.

100/1 - 7:

FOIA Relief for FBI

In addition to the relief from the provisions of the Freedom of Information Act (FOIA) currently being sought by the Federal Bureau of Investigation (FBI) and the Department of Justice, the Director of Central Intelligence, at FBI's request, may concur in an

amendment to the FOIA which would exempt FBI's counterintelligence files from the provisions of the FOIA that require search, review, and publication, provided those files are not older than five years.

*100/1 - 8:

Access by FBI to Financial
Records For Counterintelligence
Purposes

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Federal Bureau of Investigation (FBI), an amendment to the Right to Financial Privacy Act that would require financial institutions to comply with requests by the FBI for financial records when such requests have been approved by the Attorney General or his designee for counterintelligence purposes.

100/1 - 9:

Access by FBI to Tax Records
for Counterintelligence Purposes

The Director of Central Intelligence may include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Federal Bureau of Investigation (FBI), legislation that would authorize the FBI, upon approval by the Attorney General or his designee, to receive tax return and taxpayer information regarding individuals that are the subject of a counterintelligence investigation.

*100/1 - 10:

Access by FBI to Toll Records
For Counterintelligence Purposes

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Federal Bureau of Investigation (FBI), legislation that would require telephone companies to comply with requests by the FBI for toll records when such requests have been approved by the Attorney General or his designee for counterintelligence purposes.

*100/1 - 11:

Authority to Expend Funds for
Consultation
with Foreign Officials

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Federal Bureau of Investigation (FBI) and the Department of Defense (DoD), legislation that would authorize the expenditure of funds to bring foreign officials who have counterintelligence responsibilities in their own countries to the United States for consultation with FBI and DoD representatives.

*100/1 - 12:

Access by FBI to State and Local
Criminal Records

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Federal Bureau of Investigation (FBI), legislation that would authorize access by the FBI to state and local criminal records for purposes of determining eligibility for access to classified information.

*100/1 - 13:

Loss of Federal Pension for Violation
of Intelligence Identities Protection
Act

If it does not become law as part of the Intelligence Authorization Act for Fiscal Year 1988, the Director of Central Intelligence may include in the proposed Intelligence Authorization Act for Fiscal Year 1988 a provision providing for the loss of federal pension for a federal employee convicted of a violation of the Intelligence Identities Protection Act.

*100/1 - 14:

Defense Intelligence Agency (DIA)
Proposal to Extend Termination
Authority of Secretary of Defense
with Respect to Defense Intelligence
Agency Civilian Personnel

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Defense Intelligence Agency (DIA), an amendment to Chapter 83 of title 10, United States Code, to extend for two

additional fiscal years the authority of the Secretary of Defense to terminate the employment of DIA civilian personnel originally provided in Title V of the Fiscal Year 1985 Intelligence Authorization Act.

*100/1 - 15:

Department of Defense Proposal to
Extend the Provision of Section 1604,
P.L. 96-618, to the Military
Departments

Title V of the Fiscal Year 1985 Intelligence Authorization Act (P.L. 98-618) entitled, "Defense Intelligence Agency Personnel Management Improvements," granted the Secretary of Defense certain personnel management authorities with regard to civilian officers and employees in the Defense Intelligence Agency. If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of Department of Defense, legislation to extend these authorities to civilian officers and employees in the intelligence organizations of the military departments.

*100/1 - 16:

Exchange of Mapping, Charting, and
Geodetic Data with Foreign Nations

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Department of Defense, legislation which would clarify the authority of the Defense Mapping Agency to exchange or furnish

mapping, charting and geodetic (MC&G) data, supplies or services to a foreign country pursuant to an agreement for the production or exchange of MC&G data.

*100/1 - 17:

Related Travel and Medical Care
Expenses for Defense Intelligence
Agency Civilian Employees Serving
Overseas

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Defense Intelligence Agency (DIA), legislation to provide DIA the authority to pay for travel and related expenses in connection with obtaining necessary medical care for DIA civilian employees serving abroad equivalent to that now available to employees of the Central Intelligence Agency, the National Security Agency, and the Foreign Service.

*100/1 - 18:

Exceptional Intelligence Community
Award Program

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the Department of Defense, legislation to ensure that there is authority for the granting and acceptance of incentive awards for service performed by civilian and military personnel for intelligence-related activities.

*100/1 - 19:

NSA Guard Force

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act, at the request of the National Security Agency (NSA), legislation to authorize NSA personnel to assume with respect to certain NSA facilities the protective service functions currently performed there by personnel of the General Services Administration.

*100/1 - 20:

NSA Critical Skills Tuition Assistance Program

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act a provision granting to the National Security Agency (NSA) the authority to establish a "critical skills" college tuition assistance program. Under this program, NSA could offer tuition assistance to those student employees pursuing a course of studies in a designated "critical skills" area: mathematics, foreign languages, computer sciences, etc.

100/1 - 21:

Clarification of CIA/NSA/DIA Drug & Alcohol Abuse Authorities

In light of the uncertainty created by recent case law concerning alcohol and drug abuse, the Director of Central Intelligence may propose or support legislation to ensure that the Central Intelligence Agency, the National Security Agency and the Defense Intelligence Agency are able

to continue to deal with security problems in the area of alcohol and drug abuse without regard to the provisions of any other law, rule, or regulation.

100/1 - 22:

Congressional Security Survey

The Director of Central Intelligence (DCI) may support or propose legislation to authorize the provision of Executive Branch assistance to the Congress in conducting a comprehensive assessment of Congressional personnel and physical security needs.

100/1 - 23:

Foreign Agents Training Act Amendment

The Director of Central Intelligence may include in the proposed Fiscal Year 1988 Intelligence Authorization Act a proposal to amend the Foreign Agent Training Act to make clear that individuals who have received training in espionage by a foreign government, but who have failed to register as required by that Act, cannot subsequently cure the violation through registration. The proposal would also increase the penalty for failing to register as required by the Act.

*100/1 - 24:

CIA Critical Skills Tuition Assistance Program

If it does not become law as part of the Fiscal Year 1987 Intelligence Authorization Act, the Director of Central Intelligence will include in the proposed Fiscal Year 1988 Intelligence Authorization Act a provision expanding the authority of the Central Intelligence Agency (CIA) to establish a "critical skills" college tuition assistance program.

Under this program, CIA could offer tuition assistance to those student employees pursuing a course of studies in a designated "critical skills" area: mathematics, foreign languages, computer sciences, etc. This item is similar to item 100/1 - 20 as related to the National Security Agency.

100/1 - 25:

Repeal of Outdated, Unnecessary or Burdensome Reporting Requirements and Programmatic Restrictions

The Director of Central Intelligence may include in the proposed Fiscal Year 1988 Intelligence Authorization Act, and/or in the materials transmitted to the Congress in connection therewith, provisions designed to repeal outdated, unnecessary or burdensome reporting requirements and programmatic restrictions.

100/1 - 26:

NSA Special Expenditure Authority

At the request of the National Security Agency (NSA), the Director of Central Intelligence may propose or support legislation to amend the NSA Act of 1959 so as to give the Director of NSA authority to expend sums available to NSA without regard to the provisions of law otherwise restricting such expenditures.

100/1 - 27

Foreign Cryptography Control

At the request of the National Security Agency (NSA), the Director of Central Intelligence may propose or support legislation granting the Secretary of Defense and the Director of NSA the authority to prevent the

introduction of foreign-manufactured cryptography into governmental inventories and to bar foreign companies from accessing governmental cryptography.

100/1 - 28

Tax Exemption For Allowances Paid to Certain NSA Employees

At the request of the National Security Agency (NSA), the Director of Central Intelligence may include in the proposed Fiscal Year 1988 Intelligence Authorization Act an amendment to the Internal Revenue Code to exempt from taxation allowances paid to certain NSA employees under the NSA Act of 1959. Currently, these same allowances as paid to employees of the Foreign Service and the Central Intelligence Agency are tax exempt .

100/1 - 29

Retroactive Pay for Certain NSA Employees

At the request of the National Security Agency (NSA), the Director of Central Intelligence may include in the proposed Fiscal Year 1988 Intelligence Authorization Act an amendment to the NSA Act of 1959 to authorize the award to otherwise eligible NSA employees of the retroactive pay benefits awarded to certain non-NSA employees by virtue of the decision in Squillacoate v. United States, 739 F.2d 1208 (7th Cir. 1984), cert. denied, 105 S.C. 2021 (1985).

100/1 - 30

Ensuring Continuity of DCI Function

The Director of Central Intelligence (DCI) may propose or support legislation to ensure greater

continuity in the exercise of the DCI function when the DCI or the Deputy Director for Central Intelligence are not able to exercise that function.

100/1 - 31

Limited, Intelligence-Related
Interlocutory Appeal Authority

The Director of Central Intelligence (DCI) may propose legislation authorizing an interlocutory appeal by the United States in certain cases involving intelligence matters. The appeal would be allowed from a decision of a United States court on an evidentiary ruling or dispositive motion otherwise resulting in the disclosure of classified intelligence information when the DCI, with the concurrence of the Attorney General, certified that such a decision would have an adverse impact on the national intelligence mission or on the classified intelligence information sought to be protected.